Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

No. _____
October Term, 1997

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HENRY ZIMMER,
Petitioner,

v.

DAN NAUMANN, parish council chairperson,
IMMACULATE CONCEPTION CHURCH,
Respondents.

==========

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

==========

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35 pp

QUESTIONS PRESENTED FOR REVIEW

I: Is Minnesota Statutes, Section 609.748, unconstitutional on its face since it allows State Courts to restrain the free exercise of rights protected by the First and the Fourteenth Amendments by means of a simple finding of "harassment"; and is this same statute unconstitutional as it is being applied to Henry Zimmer?

II: Does an order establishing a 200-foot wide "bubble zone" which excludes Henry Zimmer from the real property of the Church of the Immaculate Conception and additional property owned by others for a full city block directly conflict with this Supreme Court's holding in *Schenck v. Pro-Choice Network of Western New York*, 117 S.Ct. 855 (1997), and the First and Fourteenth Amendments?

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II. An order establishing a 200-foot wide "bubble zone" which excludes Henry Zimmer from the real property of the Church of the Immaculate Conception and additional property owned by others for a full city block conflicts directly with this Supreme Court's holding in *Schenck v. Pro-Choice Network of Western New York*, 117 S.Ct. 855 (1997), and the First and

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PETITION FOR A WRIT OF CERTIORARI

Henry Zimmer asks that a writ of certiorari issue to review the order of the Supreme Court of the State of Minnesota, filed March 26, 1998, declining review of an unreported decision of the Minnesota Court of Appeals, filed February 3, 1998; the case caption is *Dan Naumann et al. v. Henry Zimmer*.

OPINIONS BELOW

This Petition seeks review of an order of the Minnesota Supreme Court, *Dan Naumann et al. v. Henry Zimmer*, No. C7-97-1414 (Minn. March 26, 1998), reprinted at page 1a of the Appendix. This order affirmed the judgment of the Minnesota Court of Appeals in the same case which has the same caption and appellate case number, bearing a February 3, 1998, date, reprinted at page 2a of the Appendix. Neither the order nor the decision has been officially published.

STATEMENT OF JURISDICTION

This petition seeks to review the final order of the Minnesota Supreme Court filed on March 26, 1998, and the underlying appellate decision of the Minnesota Court of Appeals. Therefore, this United States Supreme Court's jurisdiction is based on 28 U.S.C., Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United declares that "Congress shall make no law... prohibiting the free exercise [of religion]; or abridging the

freedom of speech...." The Fourteenth Amendment then states that these same constitutional privileges and immunities shall not be "abridged" by the States. Zimmer and his attorney raised these freedom of religion and freedom of speech issues in the harassment-restraining order hearing and again before the Minnesota Court of Appeals and its Supreme Court. Counsel for Zimmer served Attorney General, Mr. Hubert H. Humphrey III, with a copy of the Appellate brief and so gave an opportunity to intervene at the appellate level, Rule 144, Minnesota Rules of Civil Appellate Procedure; see also *State v. Castellano*, 506 N.W.2d 641 (Minn. Ct. App. 1993).

STATEMENT OF THE CASE

On July 18, 1997, the Anoka County District Court amended an extant harassment-restraining order to expand the area from which Petitioner Henry Zimmer would now be excluded.

Daniel Nauman, the chairman of the advisory parish council of the Church of the Immaculate Conception, had originally initiated an action pursuant to Minnesota Statutes, Section 609.748, to request a restraining order against Henry Zimmer. Zimmer appealed to the Minnesota Court of Appeals, raising the issue that the extent of the area from which Zimmer had been excluded went far beyond constitutional limits and had offended the Free Speech and the Freedom of Religion Clauses of the United States Constitution.

The Court of Appeals approved the first harassment-

restraining order,[1] stating that the lower court's April 25, 1996, restraining order is "sufficiently clear and tailored to protect the interests of both parties," Unpublished slip opinion, *Naumann et al. v. Zimmer*, 1997 WL 10520, at 3 (Minn. App. 1997). The first restraining order indicates that "Henry S. Zimmer shall not enter upon the premises of the Petitioner, Immaculate Conception Church, which includes the front of the Church on 41st Street N.E., Jackson Street, 40th Street N.E., and/or any other Church property," id. at 1. This language reflected the Church's demand that Zimmer be effectively excluded from the Church's real property.

Mr. Zimmer then protested outside the area from which he had been banned by the district court. The protests were largely limited to Mr. Zimmer's parking a trailer bearing pictures and slogans opposing abortion.

The parish now responded with a false claim that Zimmer had violated the restraining order and demanding that Zimmer be prosecuted criminally for this supposed violation. The prosecutor refused to prosecute Zimmer.

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[1]Zimmer appealed the previous Court of Appeals' decision to the United States Supreme Court, arguing that the District Court and the Court of Appeals have declared a rule wholly at odds with United States Supreme Court jurisprudence. This rule permits the leader of a religious community to exclude another member notwithstanding due process protections in the polity of the religious community. See No. 96-1997, *Zimmer v. Naumann et al.*, October Term, 1996, United States Supreme Court docket. This Court did not accept the petition for a writ of certiorari.

In fact, Officer Rollin Goldsberry, noted that Zimmer's "truck had large posters on it denouncing human abortion." Immaculate Conception's priest reported that he "saw Henry Zimmer standing beside Zimmer's truck and saw the truck parked on 41st Av[enue] with the anti-abortion posters on it."

It turned out that the purported breach of the harassment-restraining order was only a pretext to return to court: The church now asked that the restraining order be extended a full city block beyond the streets at the outermost edges of the church's real property.

The District Court after questioning openly whether Mr. Zimmer's constitutional rights were being protected amended the harassment order. As a result of this most recent revision of the restraining order, Henry Zimmer has to remain even farther from the Church of the Immaculate Conception.

At the hearing to extend the restraining order, Counsel for Zimmer asserted that Zimmer had a constitutional right to state his political and religious views within earshot and sight of his former parish church and its parishioners. Counsel for the Church claimed that harassment rather than constitutional protections were the sole matter before the Court. Zimmer himself stated in a responsive affidavit, "I believe that I have the constitutional right to protest and to demonstrate against abortion based on both free speech and freedom of religion grounds."

The initial restraining order commanded Henry Zimmer to keep off the "premises" or real "property" of the Church of the Immaculate Conception. The newly-amended

restraining order now restrains Mr. Zimmer not only from the "premises of the Petitioner, Immaculate Conception Church," but also, "upon the following streets and alleys, driveways, sidewalks or property adjacent thereto...., Amended restraining order at unpaginated page 2, A-11a.

Zimmer predictably appealed to the Minnesota Court of Appeals and then to the Minnesota Supreme Court. Court of Appeals Judge Harriet Lansing vigorously dissented in favor of Henry Zimmer.

When the restraining order had expired by its own terms, the Church haled Henry Zimmer once more to Court asking that the harassment-restraining order be extended or renewed. The district court, without obligating the Church to prove its full case and without any proof that Zimmer had annoyed the church since the expiration of the restraining order, ordered Zimmer to state what he *intended* to do. Zimmer asked the court to describe the parameters within which he could safely protest. The court refused. At the close of the hearing, given that Counsel for Zimmer having raised prior restraint issues, the district court directed that respective counsel brief these issues. On the day that the church had to respond, the church dismissed its most recent demand for a harassment-restraining order.

The matter has not become moot since Zimmer plans to peacefully protest again. As Judge James Gibbs noted in this most-recent hearing, "I guess all of it leads me to believe that the protesting is going to continue on exactly as it has been before and Henry [Zimmer] will be down in front of the Church doing exactly what he did before, and we're back in the soup again." Transcript of Proceedings, Motion Hearing, File No. CO-96-896, held May 7, 1998.

REASONS WHY THE WRIT SHOULD ISSUE

I: Minnesota Statutes, Section 609.748, is unconstitutional on its face since it allows State courts to restrain the free exercise of rights protected by the First and the Fourteenth Amendments by means of a simple finding of "harassment"; additionally, is this same statute being unconstitutionally applied to Henry Zimmer.

II: An order establishing a 200-foot wide "bubble zone" which excludes Henry Zimmer from the real property of the Church of the Immaculate Conception and additional property owned by others for a full city block conflicts directly with this Supreme Court's holding in *Schenck v. Pro-Choice Network of Western New York*, 117 S.Ct. 855 (1997), and the Constitution's First and Fourteenth Amendments.

Henry Zimmer did not violate a single provision of Judge James Gibb's April, 1996, restraining order or the subsequent amended order.. The dissent in the Court of Appeals' opinion notes that "there has been no interference with the free flow of traffic on the streets or sidewalks, no interference with the parishioners' right to worship, and no identifiable threat to public safety or the orderly conduct of daily living," A-9a. The amended restraining order "does not comply with First Amendment protections," A-9a.

Henry Zimmer has a constitutional right under the Freedom of Speech and Freedom of Religion clauses to be present at the Church of the Immaculate Conception to make his religious and political views known to members of that

Parish. The United States Constitution does not allow a person who has acted peaceably to be essentially excluded from his intended political and religious audience.

Minnesota Statutes, Section 609.748, Subdivision 1(a)(1), states that "Harassment" includes: repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target."

The police statements related to Zimmer's arrest demonstrate nothing more than the officers' observation of signs and slogans supporting Zimmer's anti-abortion message. Zimmer's *message* is what is being proscribed, but the Church of the Immaculate Conception "may not choose the appropriate subjects for public discourse....," *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 514 (1981). The Minnesota law at issue here does not allow for a defense based on constitutional rights. Instead, "unwanted words" are enough to trigger a harassment-restraining order hearing. The same criminal statute can result, in conjunction with other offenses, in a gross misdemeanor or felony conviction, Minnesota Statutes, Section 609.748, Subdivisions 6(d) and (c). Even so, content-based restrictions on speech, political or religious, cannot survive strict scrutiny, *Widmar v. Vincent*, 454 U.S. 263, 270 (1981), without a compelling state interest and narrowly-drawn restrictions, *Jamison v. Texas*, 318 U.S. 413, 416 (1943).

Henry Zimmer cannot be restrained from protesting within haling distance of his former parish church, *Schenck v. Pro-Choice Network of Western New York*, 117 S.Ct. 855 (1997). In *Schenck*, the Supreme Court allowed protesters on

the public sidewalks to communicate their message to a targeted individual "from a normal conversational distance or [by] handing out leaflets on public sidewalks." The restraining order in the present case is unconstitutional because it denies freedom of speech and freedom of expression and freedom of religion to Zimmer. See also, *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 114 S.Ct. 2516 (1996). .

The *Madsen* decision, *id.*, upheld only two provisions of an amended restraining order: A buffer zone allowing free access to the clinic's driveways and entrances and restrictions against loud noises during a clinic's normal business hours. The fixed buffer zones allowed a protester to stand approximately ten to twelve feet from vehicles entering the clinic's property, *Madsen* at 2527. The buffer zone in the Zimmer case (well over 200 feet wide) keeps Henry Zimmer largely out of sight and effectively out of voice range, silencing him.

The United States Supreme Court determined that "in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment," *Madsen* at 2529, citing *Boos v. Barry*, 485 U.S. 312, 322 (1988). Zimmer's speech should not be categorized as insulting or outrageous where he means only to protect the lives of unborn children.

In the hands of the Church of the Immaculate Conception, the Minnesota harassment-restraining legislation perverts constitutional guarantees of freedom of speech and freedom of religion, freedoms which the Church itself surely cherishes.

Recent case law applying *Schenck* and *Madsen*, show that the restrictions ordered against Zimmer are unconstitutional: In *Lucero v. Trosch*, 121 F.3d 591, (11th Cir. 1997), the Court held that an injunction violated more speech than was necessary to serve a significant government interest except for the appropriate enjoining of demonstrations within 25 feet of an abortion clinic. Zimmer is kept ten to fifteen times beyond this 25-feet limit. In *United States v. Scott*, 975 F.Supp.428, 432 (D. Conn. 1997), the court permitted a fourteen-feet buffer zone to remain and allowed a protester to stand across the street from his hearers.

CONCLUSION

For all these reasons, Minnesota Statutes, Section 609.748, should be declared to be unconstitutional on its face since it makes no effort to protect one's constitutional rights. The same statute is unconstitutional as it has been applied by the State courts against Zimmer.

Dated at St. Paul, Minnesota, this 24 June 1998

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STATE OF MINNESOTA
IN SUPREME COURT
C7-97-1414

Dan Naumann, parish council chairperson,
et al., petitioners,

Respondents,

vs.

Henry Zimmer,

. Appellant.

ORDER

Based upon all the files, records and proceedings herein,
IT IS HEREBY ORDERED that the petition of Henry Zimmer for further review be,
and the same is, denied.

Dated: March 26, 1998

BY THE COURT:
Kathleen A. Blatz
Chief Justice

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (1996).

STATE OF MINNESOTA
IN COURT OF APPEALS
C7-97-1414

Dan Naumann, parish council chairperson, et al., petitioners,
Respondents,
vs.
Henry Zimmer,
Appellant.

Filed February 3, 1998
Affirmed
Schumacher, Judge
Dissenting, Lansing, Judge

Anoka County District Court
File No. CO96896

Andrew J. Eisenzimmer, John C. Gunderson, Meier, Kennedy & Quinn, Chartered. 2200 North Central Life Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondents)
Lawrence H. Crosby, Crosby & Associates, 630 Roseville Professional Center, 2233 Hamline Avenue North. St. Paul, MN 55113 (for appellant)

Considered and decided by Lansing, Presiding Judge, Schumacher, Judge, and Forsberg, Judge.*

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*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI. § 10.

UNPUBLISHED OPINION

SCHUMACHER, Judge

In this appeal challenging the amendment of an existing harassment restraining order, appellant Henry Zimmer has failed to show the terms of the amended order burden more speech than necessary. We affirm.

FACTS

Zimmer has harassed respondent Immaculate Conception Church (the church) for almost 10 years. In 1990, after dealing with Zimmer's disruptions for some time, Father Sochacki, the church's former pastor, wrote Zimmer a letter informing him he was no longer welcome on church property. Zimmer disregarded the pastor's letter and was subsequently convicted of two counts of trespassing on church property. These convictions were affirmed by both this court and the Minnesota Supreme Court. ***State v. Zimmer,*** 478 N.W.2d 764 (Minn. App. 1991); ***State v. Zimmer,*** 487 N.W.2d 886 (Minn. 1992). Zimmer also sued Father Sochacki. The district court dismissed all but two claims. A jury subsequently found in favor of Father Sochacki on the remaining claims. ***Zimmer v. Sochacki,*** No. CO-93-693 (Minn. App. Sept. 28, 1993) (affirming district court's dismissal and jury's verdict), ***review denied*** (Minn. Nov. 23, 1993).

In April 1991, a harassment restraining order was issued. The order prohibited Zimmer from entering church property and abutting sidewalks and from having any contact with the church's pastor for two years, the maximum period permitted by statute.

When the order expired, Zimmer was invited back to the church. Soon however, Zimmer resumed his disruptive activities, interfering with the ability of other parishioners to worship. The church's new pastor, Father Moudry, then wrote to Zimmer, informing him again that he was no longer allowed on church property. Zimmer disregarded the letter and continued to disturb church services, including a Christmas service.

On April 25. 1996, the church obtained another restraining order barring Zimmer from church property and from having any contact with the pastor and other church leaders. The order also required Zimmer to cease and desist from any conduct that constituted harassment of the church. Zimmer appealed the order, arguing it violated his First Amendment rights. This court affirmed the terms of the original *order*. ***Naumann v. Zimmer***, No. C2-96-1066 (Minn. App. Jan. 14, 1997), ***review denied*** (Minn. Mar. 18, 1997), ***cert. denied***, 118 S. Ct. 74 (1997).

Zimmer continued to harass the church and its parishioners. In 1997, the church brought a motion requesting that the terms of the existing order be amended and that Zimmer be held in contempt. The district court granted the motion to amend the order but, upon agreement by the parties, dismissed the claim for contempt. The amended order bars Zimmer from all church property and a one-block area around the church.[1]

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[1] More specifically, the amended order prohibits Zimmer from being on 41st Avenue NE between Monroe and Van Buren; on 40th Avenue NE between Monroe and Van Buren; on Jackson Street between 41st Avenue NE and one-half

It does not extend the term of the restraining order, which will expire April 24, 1998. Zimmer appeals the amended order.

DECISION

1. Zimmer argues the law of the case doctrine prohibits amendments. The doctrine of the law of the case is based on the policy that issues fully litigated should be set to rest. ***Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.***, 503 N.W.2d 793, 795 (Minn. App. 1993), ***review denied*** (Minn. Sept. 30, 1993). The doctrine usually applies when an appellate court has ruled on a legal issue and remanded for further proceedings on the matter. ***Kornberg v. Kornberg,*** 525 N.W.2d 14, 18 (Minn. App. 1994). ***aff'd,*** 542 N.W.2d 379 (Minn. 1996). The issues decided become the law of the case and may not be relitigated in the trial court or reexamined in a second appeal. ***Mattson v. Underwriters at Lloyds,*** 414 N.W.2d 717, 719-720 (Minn. 19871). Unlike res judicata, the doctrine of law of the case "applies only to litigated issues and does not reach issues which could have been but were not litigated." ***Lange v. Nelson-Ryan Flight Serv., Inc.***, 263 Minn. 152, 156, 116 N.W.2d 266, 269 (1962).

The law of the case doctrine does not apply here because the propriety of limiting Zimmer's proximity to church property has not been litigated before. Moreover, this court's affirmance of the original order rested on a determination that

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block south of 40th Avenue; and finally on Quincy Street one-half block north of 41st Avenue NE and one-half block south of 40th Avenue.

the terms of that order did not offend Zimmer's constitutional rights, but we did not limit the district court's continuing jurisdiction to modify and add to the terms of the original order. ***Kornberg,*** 525 N.W.2d at 18.

2. Zimmer argues the district court's failure to hold a hearing prior to amending the order was error. We disagree. Before issuing a permanent harassment restraining order, a district court is required to hold a hearing. Minn. Stat. § 609.748, subd. 5 (1996). This court has held that the hearing must involve the taking of sworn testimony and the right to cross-examine witnesses under oath. ***Anderson v. Lake,*** 536 N.W.2d 909, 911 (Minn. App. 1995).

Determining whether the district court complied with the statute is a question of law, which we determine de novo. ***Hibbing Educ. Ass'n v. Public Employment Relations Bd.,*** 369 N.W.2d 527, 529 (Minn. 1985). The district court held a hearing that complied with ***Anderson*** when it issued the original order. The amended order merely modified the terms of the existing order, without extending the term of that order. Both parties had an opportunity to submit legal memoranda and affidavits. The district court was not required to hold a separate hearing before it amended the order to preclude additional harassment.

3. Zimmer argues the terms of the amended order violate his constitutional right to free speech. Whether the district court's amended order violates Zimmer's constitutional right to free speech is a question of law this court reviews de novo. ***Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n.,*** 358 N.W.2d 639, 642 (Minn. App. 1984). A content-neutral injunction violates the First Amendment if it burdens more speech than necessary to

serve a significant governmental interest. ***Schenck v. Pro-Choice Network***, 117 S. Ct. 855, 864-65 (1997). Whether a governmental restriction is constitutional is determined by asking what purpose the regulation serves. ***Madsen v. Women's Health Center, Inc.***,512 U.S. 753, 763, 114 S. Ct. 2516, 2523-24 (1994).

The amended order in this case is content-neutral because its purpose is not related to the content of Zimmer's speech. The order was issued to promote public safety, provide free flow of traffic on the streets and sidewalks, and protect the church's property rights. The order also protects Zimmer. The pastor testified previously that the parishioners are fed up with Zimmer's harassment and have spoken of violence toward Zimmer. The purposes of the amended order are unrelated to the content of Zimmer's speech. ***See id.*** at 767-68, 114 S. Ct. at 2526.

Having determined that the restraining order is content-neutral, we next ask whether it burdens more speech than necessary. ***Schenck,*** 117 S. Ct. at 864-65. A record of abusive conduct may support a restriction on speech in a traditional public forum. ***Id.*** at 868-69. Zimmer's long history of harassing the church, including previous criminal convictions for trespass, supports the district court's finding that unless the area from which Zimmer is excluded is expanded, he will continue the pattern of harassment. The facts of this case show that the one-block restriction burdens no more speech than necessary. ***See Welsh v. Johnson***, 508 N.W.2d 212, 216 (Minn. App. 1993)

Affirmed.

LANSING, Judge (dissenting)

On April 25, 1996, the Anoka County district court issued an order restraining Henry Zimmer from entering the premises of Immaculate Conception Church, including the "front of the church on 41st St. N.E., Jackson St., 40th St. N.E. [and] any other church property." The evidence is undisputed that Zimmer has not violated that restraining order.

Zimmer has, however, continued his anti-abortion protest by parking his van, with anti-abortion signs attached to it, on a public street outside the area covered by the April 25, 1996, restraining order but still within view of the church. In response, the church obtained an amended restraining order that bars Zimmer not only from the church property and entrance, but creates a one-block buffer zone around the property. The buffer zone includes the surrounding sidewalks, streets, alleys, and private property.

The test for determining whether the amended restraining order violates Zimmer's expressive rights under the First Amendment is "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest." ***Schenck v. Pro-Choice Network***, 117 S. Ct. 855, 864 (1997) (quoting ***Madsen v. Women's Health Ctr., Inc.***, 512 U.S. 753, 765, 114 S. Ct. 2516, 2525 (1994)). The majority observes that we have previously upheld a two-block geographic restriction on picketing by abortion protestors. ***Welsh v. Johnson***, 508 N.W.2d 212, 216 (Minn. App. 1993). But the restriction in ***Welsh*** was applied to targeted picketing of a clinic worker's house on a block with only two other houses in a secluded residential area. The church is not in a remote location, and

Zimmer's activities are directed not toward one person but the entire body of parishioners to whom he wishes to convey his message. A protestor's using the public street or sidewalk to comment on matters of public concern may be annoying to others, but it is the classic form of speech that is at the heart of the First Amendment. ***See Schenck,*** 117 S. Ct. at 866.

The church's interest in protecting its private property and the safety of its parishioners is significant. But the record demonstrates that since the April 25, 1996, restraining order there has been no interference with the free flow of traffic on the streets or sidewalks, no interference with the parishioners' right to worship, and no identifiable threat to public safety or the orderly conduct of daily living. On this record, the extensive buffer zone burdens more speech than necessary. ***See id.*** at 866-67 (striking down all but a 15-foot buffer zone around the entrance of an abortion clinic). Because the restraining order as amended does not comply with First Amendment protections, I would remand to the district court to reinstate the April 25, 1996, restraining order that extends to April 24, 1998.

STATE OF MINNESOTA DISTRICT COURT

ANOKA COUNTY TENTH JUDICIAL DISTRICT

DAN NAUMANN, parish council chairperson, and IMMACULATE CONCEPTION CHURCH,
Petitioner, **ORDER**

vs. **Court File No. Co-96-896**

HENRY ZIMMER,
Respondent.

The above-entitled matter came on for hearing before the Honorable James D. Gibbs, Judge of District Court, on the 9th day of July, 1997, at the Anoka County Courthouse, Anoka, Minnesota.

Andrew J. Eisenzimmer, Esq., appeared for and on behalf of Immaculate Conception Church.

Lawrence H. Crosby, Esq, appeared for and on behalf of Henry Zimmer.

Based upon the files, records and proceedings herein, and the arguments of counsel, the Court makes the following:

ORDER

1. That Petitioner's motion to amend the Harassment Restraining Order in the aboveentitled matter, filed on April 25, 1996 is hereby granted. The following provisions are hereby made specific provisions for this Order.

ANY FAILURE BY RESPONDENT HENRY S. ZIMMER TO OBEY ANY OF THE FOLLOWING PROVISIONS SHALL CONSTITUTE A VIOLATION OF THIS ORDER AND SHALL BE PUNISHABLE AS A MISDEMEANOR WITH IMPRISONMENT FOR UP TO 90 DAYS OR A FIND OF UP TO $700, OR BOTH.

A PEACE OFFICER MUST ARREST WITHOUT WARRANT AND TAKE INTO CUSTODY THE RESPONDENT IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON HAS VIOLATED THIS ORDER.

(a) Respondent Henry S. Zimmer shall not enter upon the premises of the Petitioner, Immaculate Conception Church, or upon the following streets and alleys, driveways, sidewalks or property adjacent thereto:

1. 41st Avenue N.E. between Monroe and Van Buren;
2. 40th Avenue N.E. between Monroe and Van Buren;
3. Jackson Street between 41st Avenue N.E. and one-half (1/2) block south of 40th Avenue.
4. Quincy Street between one-half (1/2) block north of 41st Avenue N.E. and one-half (1/2) block south of 40th Avenue.

(b) Respondent shall have no contact with Father Paul G. Moudry, Marita Duffy-Meekin, Ray D. Posterick and Daniel John Naumann,

including any property upon which these individuals reside. "No Contact" is defined as in person, by telephone, by letter, by signs, through an intermediary, except his attorney, or by any other means.

(c) Respondent shall also cease and desist from any conduct that constitutes harassment of the Petitioner, Immaculate Conception Church, and the individuals listed in (b) above.

2. That this Amended Harassment Restraining Order shall remain in effect until April 24, 1998.

3. That the Court Administrator shall send a copy of this Amended Harassment Restraining Order to the Columbia Heights Police Department, which has jurisdiction over the premises of the Petitioner, Immaculate Conception Church.

4. That the sheriff of any county in this State shall perform the duties relating to service of process without charge to the Petitioner.

5. That Respondent's motion for attorneys' fees in this matter is hereby denied.

6. That the attached memorandum is hereby incorporated into and made a part of this Order.

BY THE COURT:
James D. Gibbs
Judge of District Court

MEMORANDUM

I. Background

On April 25, 1996 this Court issued a Harassment Restraining Order in the above-entitled matter, which states:

(a) Respondent Henry S. Zimmer shall not enter upon the premises of the Petitioner, Immaculate Conception Church, which includes the front of the Church on 41st St. N.E., Jackson St. 40th St. N.E., and/or any other Church property.

(b) Respondent shall have no contact with Father Paul G. Moudry, Marita Duffy-Meekin, Ray D. Posterick and Daniel John Naumann, including any property upon which these individuals reside. "No Contact" is defined as in person, by telephone, by letter, by signs, through an intermediary, except his attorney, or by any other means.

(c) Respondent shall also cease and desist from any conduct that constitutes harassment of the Petitioner, Immaculate Conception Church, upon its property, and the individuals listed in (b) above.

Respondent Zimmer appealed said Harassment Restraining Order to the Minnesota Court of Appeals, arguing that the Order was ambiguous and overly broad. See Naumann et al. v. Zimmer, 1997 WL 10520 (Minn. App. 1997). The Court of Appeals rejected Respondent's argument and found the Order to be sufficiently clear to protect the interests of both parties. Id.

Petitioner argues that Respondent has continued, on a frequent basis, to harass Petitioner Church by protesting across the street from the Church on 41st Avenue, just east of Jackson Street. Petitioner now seeks to amend the Harassment Restraining Order to prohibit Respondent from coming any closer than one block in any direction from the Church property.[2]

Respondent opposes Petitioner's motion, claiming that the existing Order is clear on its face and has not been violated. Respondent argues that expanding the perimeters of the area of which Respondent is prohibited from protesting is an infringement of his First Amendment rights.

II. Analysis

Harassment consists of "repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, and privacy of another, regardless of the relationship between the actor and the intended target." Minn. Stat.§ 609.748, subd. I(a)(1)(1996). The statute also provides that if the court finds harassment occurred, it may issue a criminally enforceable restraining order limiting a party's movements, communications and associations as to the harassed party. Welsh v. Johnson, 508 N.W.2d 212, 214 (Minn. App. 1993).

In the case at hand, there is no question in the Court's

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[2]Petitioner's motion papers also included a motion for an order finding Respondent in contempt of court for violation of the Harassment Restraining Order filed April 25, 1996. At the July 9, 1997 hearing, both parties agreed that contempt of court was no longer at issue.

mind that Respondent's conduct is meant to harass Petitioner Church. Respondent positions himself across the street from the Petitioner Church displaying pictures of aborted fetuses and other inherently offensive materials while parishioners walk to church services and parents bring their children to the church school. Such harassing conduct is intrusive toward Petitioner Church as it adversely affects the Church's ability to function peacefully.

Furthermore, Respondent cannot cloak himself in First Amendment protections in an attempt to continue this harassing conduct. "[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. Welsh, 508 N.W.2d at 215 (quoting Heffron v. Int'l Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 647, 101 S.Ct. 2559, 2564, 69 L.Ed.2d 298 (1981). Such rights are subject to reasonable time, place, and manner restrictions. Id.

Moreover, the federal courts have held that when otherwise permissible acts are done with the intent to harass, whether at a home or not, governmental interests in the protection of its citizens are triggered. Id.

Because Respondent is exercising his right of free speech in such close proximity to individual parishioners entering or leaving the Church property so as to harass them, the government has an interest in protecting these individuals. Consequently, the Harassment Restraining Order filed on April 25,1996 shall be amended to include the one-block restrictions.

J.D.G.